

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs February 22, 2002

H&S EXCAVATING v. JERRY W. WALKER

Appeal from the Circuit Court for Macon County
No. 4527 Clara Byrd, Judge

No. M2001-02619-COA-R3-CV - Filed February 4, 2003

This appeal arises out of a dispute over the construction of a water system that was to serve two complexes of broiler chicken houses. The landowner refused to pay the final two invoices for the work because, he claimed, the water system was not completed by the deadline and the workmanship on part of the system was poor, requiring him to incur additional expenses to correct it. The installers filed suit in the Macon County General Sessions Court and were awarded a judgment against the landowner; the landowner appealed and counter-claimed for damages in the Macon County Circuit Court, raising the additional issue of whether the plaintiff company was limited in its recovery of damages because it was an unlicensed contractor. The circuit court awarded the company a judgment of \$9,714.32 and upheld the landowner's counter-claim for \$3,673.70, resulting in a net judgment in favor of the company of \$6,040.62. The landowner appeals. Because we find that the trial court was correct in finding that the excavators were not "contractors" under Tenn. Code. Ann. § 62-6-101 et. seq., the "Tennessee Contractor's Licensing Act," and because the evidence does not preponderate against the amount of damages awarded, we affirm the trial court's decision.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed and Remanded

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which BEN H. CANTRELL, P.J., M.S., and WILLIAM C. KOCH, JR., J., joined.

David W. Lawrence, Lebanon, Tennessee, for the appellant, Jerry W. Walker.

David Bass, Carthage, Tennessee, for the appellee, H&S Excavating.

OPINION

This is an appeal from a judgment in a non-jury case in favor of H&S Excavating ("H&S"), the appellee, in the amount of \$9,714.32, against Jerry W. Walker, the appellant. Mr. Walker counter-claimed, and was awarded a judgment against H&S on his counter-claim in the amount of

\$3,673.70, resulting in a net judgment in favor of H&S in the amount of \$6,040.62. Mr. Walker appeals the judgment in favor of H&S; H&S did not appeal the judgment or set off in favor of Mr. Walker.

I. Background

H&S was a partnership consisting of Thomas Swindle and his step-son, Jeff Harper. Mr. Swindle and Jerry Walker made an oral contract in November of 1999 for H&S to install a water system on property owned by Mr. Walker and his wife. The purpose of this water system was to serve two (2) complexes of broiler chicken houses, each containing eight (8) houses. The water system was to consist of two sources of water; city water and spring or creek water. There was some dispute as to which source was to be primary and which secondary. The water source from the creek required the construction of a dam and the installation of a holding tank, containing a pump.

The agreement between H&S and Mr. Walker called for H&S to provide and operate the necessary equipment and to provide labor to install the water lines and ancillary installations for the creek source. The verbal contract called for Mr. Harper to oversee the job on a day-to-day basis and to operate equipment, and his time was to be billed at twelve dollars (\$12.00) per hour with other employees to be billed at ten dollars (\$10.00) per hour. A backhoe provided by H&S was to be billed at thirty-five dollars (\$35.00) per hour; later, both parties agreed a bulldozer was also needed and agreed to a rate of sixty-dollars (\$60.00) per hour including its operator. Mr. Walker also approved the use of a trencher on the job, which H&S acquired by renting it from another source. No firm understanding was made between the parties as to the billing of the trencher.

The testimony of Mr. Walker and that of Mr. Swindle are totally consistent on two issues involved in the formation of the contract. First, it was agreed that Mr. Walker would provide all the materials: e.g. pipe, fittings, gravel, etc. H&S agreed to provide only labor and equipment. Mr. Walker had an account with a regular supplier, and generally H&S simply picked up materials from this supplier which were charged directly to Mr. Walker's account. However, when the regular supplier was out of needed material, H&S was to get the material elsewhere and get reimbursed by Mr. Walker. It was critical to Mr. Walker to meet certain deadlines, referred to as "chick dates", when the first chicks would be delivered to each of the two complexes, so the arrangement was for Mr. Walker's convenience.

Second, both parties testified that at the outset no figure for the total work to be done by H&S was discussed. Mr. Swindle testified that he had put in water lines on other projects. He had bid on and performed work installing water lines for a city project, so he was aware of the \$25,000 limitation on unlicensed contractors. He also stated, however, that it was generally understood in the area that if you did work on an hourly basis, the limitation was not a factor.

Mr. Walker, a CPA, testified that no total cost of H&S's work was discussed at the outset. He had made calculations regarding the materials needed, and had purchased much of the pipe

already. He testified that he “had in my mind that I could put in the water - the water line for probably \$15,000.” He also testified he did not share this estimation with Mr. Swindle.

Mr. Walker had a contract with Cagle Keystone, LLC to raise broiler chickens and he had two chick dates, March 7, 2000, and April 7, 2000, when the first chicks would be delivered to each of the two complexes. The parties agreed that each water system needed to be working by the relevant chick date. H&S had the city water source working in the first complex by the March chick date, but Mr. Walker fired H&S prior to the April chick date and finished hooking the second complex up to the city water source himself. The spring or creek water source was not completed for either complex by the chick dates. Mr. Walker testified that the work done by H&S on the dam and holding tank was unacceptable and he had to hire someone else to re-do as well as complete that work. Until it was done he had to use the more expensive city water as his primary source.

Mr. Walker also had a financing arrangement with another Cagle entity. That arrangement required payments for the improvements on Mr. Walker’s property to be submitted by the contractors to Mr. Walker, who would approve the bills for payment and then forward them to the financing entity for payment. H&S received three payments totaling \$21,477.01.¹ This amount represented invoices through the February 2000 invoice. H&S did not receive payment for the final work that they claim was performed and was invoiced in March and April, and filed suit against Mr. Walker in Macon County General Sessions Court. H&S was awarded a judgment of \$11,339.55. Mr. Walker appealed that judgment to the circuit court and filed a counter-claim for damages he claims were incurred in making repairs to the work done by H & S.

II. The Tennessee Contractor’s Licensing Act

Under the Tennessee Contractor’s Licensing Act of 1994 (the “Act”), “[a]ny unlicensed contractor covered by the provisions of this chapter shall be permitted in a court of equity to recover actual documented expenses only upon a showing of clear and convincing proof.” Tenn. Code Ann. § 62-6-103(b). Thus, a person who performs “contracting” without the required license is limited in any recovery in a suit on the contract to only actual expenses, which must be shown by clear and convincing evidence. Profit is not recoverable. There is no dispute that neither Mr. Swindle, Mr. Harper, nor H&S held a contractors license at the time they entered into the contract with Mr. Walker or performed the work.

The trial court herein determined that H&S was not limited by the statutory damages because, even though unlicensed, H&S was not a “contractor” covered by the provisions of the Act. The statutory definition of contractor is:

any person or entity who undertakes to, attempts to, or submits a price or bid or offers to construct, supervise, superintend, oversee, schedule, direct, or in any manner

¹H&S’s Brief states that H&S has been paid \$21,285.31, while Mr. Walker’s Brief states that he paid H&S \$21,477.01. The trial court used the \$21,477.01 figure, and the invoices in the record total that amount.

assume charge of the construction, alteration, repair, improvement, movement, demolition, putting up, tearing down, or furnishing labor to install material or equipment for any building, highway, road, railroad, sewer, grading, excavation, pipeline, public utility structure, project development, housing, housing development, improvement, or any other construction undertaking for which the total cost of the same is twenty-five thousand dollars (\$25,000) or more.

Tenn. Code Ann. § 62-6-102(3)(A).² “Contractor” does not include subcontractors other than certain electrical, mechanical, and plumbing subcontractors. Tenn. Code Ann. § 62-6-102(3)(D)(iii). The Act defines a prime contractor as one who contracts directly with the owner.

It is well settled that the proper construction of a statute is a question of law for the courts to decide. *Winter v. Smith*, 914 S.W.2d 527, 537 (Tenn. Ct. App. 1995)(citing *Roseman v. Roseman*, 890 S.W.2d 27, 29 (Tenn. 1994)) (some citations omitted). Consequently, the scope of review is *de novo* with no presumption of correctness as to the trial court’s interpretation of the statute; findings of fact, however, are presumed correct unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); *Winter*, 914 S.W.2d at 538 (citing *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993)).

It is the courts who must ascertain and then give the fullest possible effect to a statute’s purpose without unduly restricting or expanding the statute beyond its intended scope. The search for a statute’s purpose begins with its language. The statute’s words draw their meaning from the context of the whole statute . . . and from the statute’s general purpose. We give these words their natural and ordinary meaning . . . unless the General Assembly intends to use them in a specialized, technical sense.

Winter, 914 S.W.2d at 538 (citations omitted).

Keeping these principles of statutory interpretation in mind, the starting point for deciding whether H&S is a “contractor” under the Tennessee contractor licensing statutes is understanding the legislature’s purpose for enacting those statutes. In *Winter*, 914 S.W.2d at 538, this court stated that “The General Assembly determined fifty years ago that persons engaged in the construction business should be licensed ‘in order to safeguard life, health and property, and to promote public welfare.’” The court then explained that “Accordingly, the statutes’ licensing requirements broadly apply to all persons engaged in ‘contracting’ as that term is defined *Id.*”

²The General Assembly has amended the definition of “contractor” many times since the contractor’s licensing statutes were first enacted in 1931. For a thorough discussion of the evolution of the Tennessee contractor’s licensing statutes see *Winter v. Smith*, 914 S.W.2d 527 (Tenn. Ct. App. 1995). The relevant portion of the definition of “contractor” applicable to this case is the one in effect at the time H&S contracted with Mr. Walker to perform work on his land in November 1999, which is the same definition of “contractor” in effect today. See Tenn. Code Ann. § 62-6-102(3)(A) (1999) and (2002).

The common law rule prevented any type of recovery by an unlicensed contractor and was intended to prompt compliance with the licensing statutes. *Id.* at 542. The Tennessee Supreme Court found the rule harsh, but continued to apply with it regard to claims against owners, holding that lack of a license would generally deny access to courts. *Santi v. Crab*, 574 S.W.2d 732, 734 (Tenn. 1975); *Farmer v. Farmer*, 528 S.W.2d 539, 542 (Tenn. 1975). The Supreme Court, however, later modified the common law rule where denial of access to the courts creates an unjust enrichment. *Gene Taylor & Sons Plumbing Co. v. Corondolet Realty Trust Co.*, 611 S.W.2d 572 (Tenn. 1981). The Court has explained the development of the rule as follows:

In *Gene Taylor & Sons Plumbing Co. v. Corondolet Realty Trust Co.*, 611 S.W.2d 572 (Tenn. 1981), the matter of recovery by unlicensed contractors was reviewed in depth. We observed that the rule announced in *Farmer* and *Santi* is judicially created and designed to further the public policy behind the statute, but is not required by the licensing statute. The statute was designed for protection of the general public from unlicensed and unqualified persons. However, when this policy creates a disproportionate penalty, the general rule cannot stand and the court will be permitted to consider the merits of the case to avoid a forfeiture. Therefore, in *Corondolet*, we permitted recovery under a *quantum meruit* theory We interpreted such penalty statutes [making violation a misdemeanor] as providing sufficient protection to the public to render unnecessary the judicially created bar to *quantum meruit*. Since nothing in the statute reveals an implied intent to deprive unlicensed contractors of the right to recover the reasonable value of their services, when the wrong committed by the violation of the statute is merely *malum prohibitum* and does not endanger health or morals, we concluded that additional punishment should not be imposed unless the legislative intent is clear.

In allowing recovery under a theory of *quantum meruit*, the Court in *Corondolet* did not intend to approve unlawful conduct or enforce an illegal contract, but merely sought to avoid an unjust result. The recovery was limited to the labor and materials expended on the project as shown by clear and convincing proof and did not include any profit. The Court noted that this policy is consistent with the provisions of Tenn. Code Ann. § 62-603(c), adopted on March 27, 1980, which permits an unlicensed general contractor to recover actual documented expenses upon a showing of clear and convincing proof. Although this statutory provision was not applicable to the facts of *Corondolet*, and is not applicable to the facts in the case at bar, the Court in *Corondolet* noted that its holding was consistent with the legislative intent expressed in the statutory amendment. Therefore, in *Corondolet*, the Court carved out an exception to the harsh rule of *Farmer* and *Santi* which had previously barred unlicensed general contractors from recovery either on the contract or on *quantum meruit*.

Chedester v. Phillips, 640 S.W.2d 207, 2908 (Tenn. 1982) (citing *Gene Taylor & Sons Plumbing Co., Inc. v. Corondolet Realty Trust*, 611 S.W.2d 572 (Tenn. 1981).

As the Court stated, the legislature enacted Tenn. Code Ann. § 62-6-103(c) limiting an unlicensed contractor's recovery to its actual documented expenses. The Court has interpreted that statute as consistent with the Court's modification of the harshness of the earlier common law rule and, therefore, designed to avoid an unjust result.

III. Total Cost of Construction Undertaking

The trial court based its finding that H&S was not an unlicensed contractor subject to the limitations of Tenn. Code Ann. § 62-6-103(b) on that portion of the definition of contractor which creates a monetary minimum. The trial court found that the parties failed to agree to a specific contract amount and that the parties did not anticipate that the contract would exceed \$25,000.

On appeal, Mr. Walker argues that the trial court erred in determining that H&S was not a "contractor" within the meaning of the statute and, therefore, H&S was subject to the limitation of Tenn. Code Ann. § 62-6-103(b).

A. What Is Included in the Undertaking or Project?

H&S first argues that it is not a "contractor" under the Act because although the total project cost ended up being over \$25,000, H&S's net fee for labor and equipment was only \$17,002.50. H&S argues that reimbursement for "expenses" advanced by H&S on behalf of Mr. Walker should not be considered by the court in its determination under Tenn. Code Ann. § 62-6-102(3)(A) of whether the "total cost" of the project is over \$25,000.

As discussed above, the contract between H&S and Mr. Walker was for labor and equipment to install water lines and water systems. Provision of materials was specifically excluded from H&S's responsibility under the contract. Mr. Walker was under the obligation to provide materials, and in very large part did so. As events developed, upon occasion H&S would procure materials directly so as to keep the project going. Mr. Walker agreed to reimburse H&S for any materials so obtained.

Consequently, we conclude that the "undertaking" entered into by H&S was to provide only labor and equipment for the installation. Thus, the transactions wherein H&S procured needed materials were not part of H&S's original obligation, and the cost of those materials should not be included in determining the total cost of the contract for purposes of the definition of contractor.

The trial court reached a similar conclusion and applied a similar analysis. From the bench, although not in the order, the court stated that the billings from H&S included items that Mr. Walker was supposed to pay for directly, but that H&S paid for as a convenience to Mr. Walker. The trial

court identified those items, and totaled their cost at \$2,906.01.³ The court also concluded that the total amount paid to H&S, including the prior payments and the net judgment of \$6,040.59, minus the reimbursements for materials, would put the contract at under \$25,000. Using the trial court's figures, the total amount paid to H&S for their contracted services was \$24,611.

While we are not necessarily convinced that the damages awarded to Mr. Walker for amounts he had to pay to correct or complete some of the work should be deducted in determining the actual final cost of the work performed by H&S, we need not resolve that issue because, as explained below, it is not the actual cost after completion that determines whether an owner can use the limitation on recovery by an unlicensed contractor set out in Tenn. Code Ann. § 62-6-103(b). However, the fact that the amount eventually paid under the contract is extremely close to the \$25,000 limit, and may exceed it or not depending on how certain items are classified is, we believe, indicative of the practical problems inherent in making the determination of whether a party is a contractor after the fact.

B. Does the Monetary Definition Apply to Contract Costs or Completed Project Costs?

In its judgment the trial court found:

The contractor's license statute as set forth in T.C.A. § 62-6-102 et seq. does not apply since the parties did not agree to a specific contract amount and neither party anticipated that the contract would exceed \$25,000.00.

In its comments from the bench, the trial court made essentially the same statements, adding that at the time the contract was entered into, neither party anticipated that the total amount would implicate any licensing requirements or problems and that the total cost either did not exceed \$25,000 by much or did not exceed it at all. The evidence in the record supports rather than preponderates against these factual findings. Thus, the question is whether the statute can be fairly read to apply to the pre-construction cost or whether the \$25,000 limit must be applied after the fact to the actual cost.

In answering that question, we must consider the language of the statute and its purposes as well as the practicality of applying it. In 1976, when the Contractors Licensing Act was first passed, the relevant language of the definition of contractor was "where the cost of the completed structure or improvement, or of different structures and improvements under the same contract, exceeds

³H&S asserts that \$13,571.71 of the \$21,477.01 previously paid to H&S and \$1,702.67 of the unpaid invoices should not be included in determining the total cost of the project because those amounts represent "expenses." Obviously, H&S is using the term "expenses" to include more than materials not covered by the contract. Subtracting those expenses, H&S's total "net fee" was \$17,002.50, and, H&S argues the statute cannot be read to require "adding expenses and reimbursement to the bottom line of a contractor's payment." We disagree. Based on the plain meaning of the words "total cost" we believe that the legislature intended any and all costs, including expenses, to be considered in determining the "total cost" of a project under the Act, unless otherwise specifically excluded by the parties from the construction undertaking, as materials were in the instant case.

Twenty Thousand Dollars (\$20,000).” In 1980, the General Assembly raised the limits and changed the language to require licensure only “where the cost of the completed work, or of different projects under a single contract, equals or exceeds fifty thousand dollars (\$50,000).” Prior to 1994, the General Assembly lowered the \$50,000 cap to \$25,000. Finally, in 1994, the General Assembly again changed the language to its present version, including replacing “cost of the completed work” to “total cost.”⁴ The revised language defines “contractor” as:

. . . any person or entity who undertakes to, attempts to, or submits a price or bid or offers to construct, supervise, superintend, oversee, schedule, direct, or in any manner assume charge of the construction, alteration, repair, improvement, . . . or furnishing labor to install material or equipment for any . . . pipeline . . . or any other construction undertaking **for which the total cost of the same** is twenty-five thousand dollars (\$25,000) or more. . . .

Tenn. Code Ann. § 62-6-102(3)(A) (1994) (emphasis added).

The change in language from “cost of the completed project” to “total cost” does not necessarily dictate the conclusion that the intent was to clarify the time at which the cost was to be determined for purposes of applying the \$25,000 minimum requirement. Our review of the legislative history provided no further clarification of the intent behind this particular change. There are arguments on each side of whether any of the statutory language could be read as referring to the time in the contracting or performance at which it was to be determined whether the project exceeded \$25,000.

The other language of the statutory definition of contractor, however, implies that the applicable time for determining the cost of the project is at the time of the contracting or before the work is done. The statute speaks in terms of “undertakes to, attempts to, or submits a price or bid or offers to . . . or in any manner assume charge of . . .” a specified construction project or any other construction undertaking. This forward-looking language indicates that it is not the final cost, after completion of the project, which determines whether the \$25,000 limit has been met.

As discussed above, the purpose of the statute allowing but limiting recovery by an unlicensed contractor, as well as the Tennessee Supreme Court’s abandonment of the common law rule against any recovery in favor of a rule allowing recovery for *quantum meruit*, was to prevent an unjust result. Similarly, the legislature has decided that the public good is served by eliminating the need for a contractor’s license for projects below a monetary minimum. This decision benefits not

⁴Consequently, cases considering how the total cost should be determined which used the pre-1994 statute to look at costs of the complete project are not directly applicable on this issue. See, e.g., *Winter*, 914 S.W.2d at 540, wherein this court decided the plaintiff was an unlicensed contractor partly because the total cost of his completed work exceeded \$25,000. We note, however, that the conclusion in *Winter* would probably be the same because the cost was almost four times \$25,000 and because the parties knew that the project would cost more than that amount before a large part of the work was done.

only small contractors but also those who need construction services for small projects they might otherwise be unable to obtain or to obtain at a lower cost.

Reading the language of the statute in light of these goals, it only makes sense to determine whether a person or entity needs a license at the outset rather than the end of a project. Determining that a license is required after all or a substantial portion of the work has been performed does not further the legislative goals and has the potential to harm both the innocent small contractor and the owner. For example, parties may enter into a written contract for a cost of \$23,000, but change orders or overruns may drive the completed cost over \$25,500. Because the legislature has seen fit not to require licenses for projects under \$25,000, unlicensed contractors may rely on the contract price or estimate in deciding to undertake the work. Adjustments during performance which take the final completed cost over \$25,000, especially where minimally so, should not then subject the contractor to limitations on recovery for the work performed. This is particularly true where, as here, the owner knew the contractor was unlicensed.

In the case before us, there is no question that the parties did not anticipate that the cost of the work undertaken by H&S would exceed \$25,000. The owner, Mr. Walker, frankly admits that he anticipated the work would cost around \$15,000. The limitation on recovery applicable to an unlicensed contractor would appear to serve no public policy purpose where, as here, the owner agrees that the original contract did not meet the statutory requirements to qualify H&S as a contractor and the parties proceeded on the understanding no license was required.

In view of the facts of this case, we affirm the trial court's determination that H&S was not subject to the limitations of Tenn. Code Ann. § 62-6-103(b) because it was not a contractor within the meaning of Tenn. Code Ann. § 62-6-102(3)(A).⁵

IV. The Amount of Damages

Mr. Walker asserts that the amount of the judgment for H&S is not supported by the evidence. He states that even if H&S were a licensed contractor, or even if the limitation on

⁵H&S also argued it was a subcontractor, not a contractor, and thus not subject to the limitation on recovery. The crux of the argument is that Mr. Walker assumed the role of the general contractor on the project, making H&S merely subcontractors. H&S attempts to rely on this court's holding in *Roberts v. Yarbrough*, No. 01-A-01-9802-CH-00096, 1999 Tenn. App. LEXIS 66 (Tenn. Ct. App. Feb. 1, 1999) (no Tenn. R. App. P. 11 application filed), that § 62-6-103(b) does not apply to disputes between contractors. H&S cites Mr. Walker's substantial involvement in hiring, firing and coordinating contractors working not only on the construction of the water system, but also on the entire chicken complex project as evidence that he should be viewed as the general contractor. This court however, rejected a similar argument in *Winter*. As in the present case, "instead of hiring a general contractor to construct all the improvements, she [the owner] decided to hire several contractors and to coordinate and supervise the work herself." 914 S.W.2d at 539. This court held that "While many of the responsibilities that Ms. Winter took on during the construction would normally be a general contractor's responsibilities, the mere fact that she assumed these responsibilities does not transform the owner into a 'contractor.'" *Id.* at 539-40. The court further found that because the contractor had contracted directly with the owner he was a prime contractor according to the statute. For the same reasons, H&S's argument that it is a subcontractor must fail.

recovery by unlicensed contractors did not apply to H & S, the proof showed that H&S was only entitled to an additional \$4,480.67 instead of the \$9,714.32 awarded by the court. In response, H&S asserts that each item included in the award was supported by either direct testimony or exhibits. H&S's brief includes a chart of the expenses claimed by them which are included in the award.

Although it is difficult to precisely identify where the discrepancies between the two sets of figures lay, it appears that the majority of the difference is attributable to equipment charges for a backhoe and a bulldozer. Minor discrepancies exist in the labor and materials charges, but the major difference is found in the figures attributed by each to the usage of these machines. Mr. Walker asserts that the total amount due for the backhoe and bulldozer after the last paid invoice was \$245. For the same time period, H&S claims \$ 4595 in equipment costs. This is a difference of \$4350.

Because H&S had already received payment for work reflected on invoices through the February 21 invoice, H&S's claim was for charges after that date. Those charges were reflected on two unpaid invoices, one dated March 21st and one dated April 12th. The later one appears in the appellate record; the earlier one does not.

There was some initial confusion at trial about the March invoice, including objections, explanations, and unclear references to various documents as "this" or "that." However, it is clear that the trial court admitted the March invoice into evidence and had it marked, with the April invoice, as a collective exhibit. Its absence from the record before us is unexplained, and, in fact, unmentioned by the parties.

However, the parties testified about the exhibit, and Mr. Swindle and Mr. Harper testified about specific charges represented thereon by reference to other documents which were made exhibits and are present in the record before us. Documentation prepared by Mr. Harper, the job supervisor for H&S, shows sixty-six (66) hours of backhoe work, totaling \$ 2,310 and thirty-four (34) hours of bulldozing work, totaling \$2,040. This accounts for \$ 4,350 of the difference between the parties' figures. In addition, the invoice dated April 12, 2000, shows seven (7) hours of backhoe work totaling \$245, which amount Mr. Walker does not dispute.

The trial court heard all the testimony and reviewed the exhibits as they were explained. At the close of the proof, the trial court considered and discussed various charges and amounts. After taking all proof into consideration, the trial court granted H&S an award of \$9,714.32. We review findings of fact, such as this, *de novo*, with a presumption of correctness. Because the evidence does not preponderate against the trial court's finding we must affirm the trial court's award of \$9,714.32 to H&S.

V. Conclusion

For the reasons stated herein, we affirm the trial court's judgment. Costs are taxed to the appellant, Mr. Walker.

PATRICIA J. COTTRELL, JUDGE